

# Section Two

## Elections and the Law

- Introduction
- Elections and fundamental human rights
- Freedom of Speech
- Freedom of Assembly
- Freedom of Movement

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## Introduction

The election observer's role commences long before Election Day. The importance of the events of the voting day is certainly very crucial, but other issues such as the registration process, filing of nominations, the political campaign, the role of the media and security personnel are all matters, which should be of interest to an election observer.

The existence of an enabling environment, adherence to the rule of law and respect for fundamental human rights are essential prerequisites which are also matters of crucial importance to the election observer. All these factors contribute to ensure that an election is free, fair and legitimate. An understanding of the legal framework, which ensures the existence of an enabling environment, is of utmost necessity for the observer.

This section of the manual seeks to address the law, which regulates the key issues arising in election observation. A number of questions are posed, but they are not exhaustive and observers are encouraged to discuss other questions that may arise.

## Elections and fundamental human rights

For an election to be free and fair, fundamental human rights and freedoms should be enforced and respected by all. The Namibian constitution is the supreme law of the land. Chapter three (3) of the Namibia Constitution guarantees fundamental human rights and freedoms. Article 5 of the Constitution states that all the fundamental human rights and freedoms enshrined in the Constitution should be respected and upheld by the Executive, Legislature and Judiciary, all other organs of government and its agencies as well as all natural and legal persons. In order to campaign and to conduct an election, people as well as political parties and organizations should be able to move freely within Namibia. They should also be free to campaign and present their programs to the electorate. They should also be able to come together to hold meetings, demonstrations and rallies.

The Constitution guarantees these rights and freedoms. The existence of these rights and freedoms creates an enabling environment for elections.



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## The right to peaceful political activity

**Article 17 of the Namibian Constitution provides for the right to political activity for all citizens. The right to political activity includes the right to:**

- participate in peaceful political activity;
- to form and join any political party of one's choice;
- the right to elect any persons of one's choice to public office;
- the right to vote, for those who are 18 years or older; and
- the right to be elected to public office, for those who are 21 years or older.

## Freedom of Speech

Article 21 (1) (a) states:

*All persons shall have the right to freedom of speech and expression, which shall include freedom of the press and other media.*

**As an observer you need to ask yourself the following questions:**

- Are all political parties and politicians able and free to speak and express themselves in public without fear?
- Are people being physically attacked by their political opponents or people who hold different political views?
- Is the state or, are security agencies harassing people who are exercising their right to freedom of speech?
- Are political parties exercising their right to freedom of speech without insulting their political opponents or saying things that are not true about them?
- Is the media allowed to report freely on all phases of the electoral process?

**It is important to note that freedom of speech, however, does not mean that:**

- You have the right to insult your opponent
- You have the right to hatred or violence
- You have the right to say things that are untrue about other people.
- No one is allowed to incite hatred against other members of the community.



## Freedom of Assembly

Article 21 (1) (d) of the Constitution states:

*All persons shall have the right to assemble peacefully and without arms.*

**As an observer you have to ask yourself the following questions:**

- Are political parties free to assemble, organize and hold rallies and marches?
- Are political parties harassed, threatened or restricted in any way by security agencies or other organs of the state when they hold rallies or marches?
- Are political parties harassed or threatened by their political opponents when they hold rallies or marches?
- Are people free to assemble, organize and hold rallies, marches and demonstrations?
- Are people harassed, threatened or restricted in any way by security agencies or other organs of state when they hold rallies, marches or demonstrations?
- Are people harassed or threatened by their political opponents when they hold rallies, marches or demonstrations?

### Freedom of assembly does not give you the right to:

- Destroy other people's property during or after a demonstration, rally or procession.
- Physically attack your political opponents or those who do not share your views.

## Freedom of Movement

Article 21 (1) (g) states,

*All persons shall have the right to move freely throughout Namibia.*

### As an observer you must ask yourself the following questions:

- Are politicians and political parties free to move throughout Namibia?
- Are political parties free to go to parts of Namibia, which are considered to be strongholds of other political parties?
- Has any political leader been restricted or harassed in any part of Namibia?
- Has any political leader been refused entry into or exit from Namibia?
- Has any political leader been detained unlawfully?

It is important to note that the right to freedom of movement does not mean you have the right to trespass on other people's property.

## UNIVERSAL PRINCIPLES ON ELECTIONS AND HUMAN RIGHTS

Namibia has ratified various international and regional instruments which sets out various election related rights and duties. All these agreements are binding on Namibia. These agreements are important for testing whether our elections are acceptable to observers and the general member public.

### The most relevant international agreements applicable to Namibia in this regard are the following:

#### The Universal Declaration of Human Rights (UDHR)



The UDHR says the following about elections:

#### Article 19

*(1) Everyone has the right to freedom of opinion and expression*

#### Article 20

*(1) Everyone has the right to freedom of peaceful assembly and association.*

*(2) No one may be compelled to belong to an association*

#### Article 21

*(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*

*(2) Everyone has the right to equal access to public service in his country.*

*(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures.*

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## International Covenant on Civil and Political Rights (ICCPR)

The ICCPR says the following about elections:

### Article 25

*Every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions:*

- (1) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (2) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*

## Convention on the Elimination of All Forms of Racial Discrimination (CERD)

The CERD says the following about elections:

### Article 5

*States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:*

- (1) Political rights, in particular the right to participate in elections to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.*

## The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) The CEDAW says the following about elections.

### Article 7

*States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:*

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.*



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## African Charter on Human and Peoples' Rights (ACHPR)

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that purports to promote and protect human rights and basic freedoms in Africa.

The ACHPR came into effect on 21 October 1986. 21 October was consequently declared "African Human Rights Day".

The ACHPR, says the following about elections:

### Article 13

- (1) Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
- (2) Every citizen shall have the right of equal access to the public service of his country.
- (3) Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

## African Charter on Democracy, Elections and Governance

Article 22 of the Charter states that,

*State parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.*

## SADC PRINCIPLES FOR CONDUCTING DEMOCRATIC ELECTIONS

*The SADC Principles for Conducting Democratic Elections states that SADC Member States shall adhere to the following principles when conducting elections:*

- (1) Full participation of the citizens in the political process;
- (2) Freedom of association;
- (3) Political tolerance;
- (4) Regular intervals for elections as provided for by the respective National Constitutions;
- (5) Equal opportunity for all political parties to access the state media;



- (6) Equal opportunity to exercise the right to vote and be voted for;
- (7) Independence of the Judiciary and impartiality of the electoral institutions;
- (8) Voter education; and
- (9) Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land.

All the rights mentioned above impose three general obligations which the State must *respect*, *protect* and *fulfill*. For instance, the right to vote creates the following obligations.

1. **Obligation to respect:** To respect human rights simply means not to interfere with their enjoyment. For instance, the State should not intimidate or dictate to the people on how and for whom they should vote.
2. **Obligation to protect:** Respect human rights simply means to take steps to ensure that third parties do not to interfere with their enjoyment. For example, the State must protect the right to vote by ensuring that members and supporters of all political parties are not assaulted, harassed or intimidated by members of other political parties.
3. **Obligation to fulfill:** To respect human rights simply means to take steps to realize the right in question. For example, passing laws and creating an environment in which free and fair elections can take place.



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## CASE STUDY ONE

*The XYZ Party plans to hold a rally at the Independence Stadium. They made the necessary arrangements to book the stadium, inform the necessary authorities that they were holding the rally and advertise by way of posters, the radio, and a bicycle that drove through the streets of the town advertising their rally.*

*On the day of the rally a large group of supporters decided to march to the rally. They were singing and shouting along the way and waving their banners. A group of youngsters, belonging to party ABC came marching along the same road in the opposite direction, also waving their flags, banners and singing and shouting. They blocked the path of the supporters of XYZ and would not allow them through. The police arrived and the situation became very tense.*

*No party leaders of party XYZ were present as they were at the rally and no one could locate the leaders of party ABC. Someone in the crowd called the ECN. The crowd was extremely hostile. The group of supporters of party XYZ was becoming increasingly angry as the rally had already started. It is also a very hot day.*

Source: Democracy, Elections and Conflict Management, ECN, Participant's Manual

## Questions

1. Which rights, if any, are violated in the scenario?
2. Explain the three general obligations created by the rights in question.
3. What can you say about the behavior of party ABC's supporters?
4. How would you expect the ECN to handle a situation such as this? Why?
5. How would you expect the police to handle a situation such as this? Why?
6. How would you expect the media to cover such an incident?
7. Would you say that party ABC should be held liable for the behavior of its supporters?  
Explain why and how this can be done.

# Section Three

## Observing the Pre-Election Phase

- Observing the Election Administration
- Observing the registration of candidates  
and political parties
- Observing voter registration
- Observing the registration of women
- Observing the election campaign
- Observing the security agencies

## 1. Observing the election administration<sup>7</sup>

The conduct of the elections becomes meaningful if the wish of the individual is respected and implemented. To achieve this therefore there is always an independent electoral commission that is vested with or given the responsibility over the conduct of the elections. The Electoral Commission of Namibia was established to fulfill this role.<sup>8</sup> Electoral administration and management should ensure the legitimacy and impartiality of the electoral process.

### A. Structure of the Election Administration

**The ECN is independent from any other institution of government. It has the full legal responsibility for the conduct of elections. In particular, the ECN has to:**

- Supervise and control the registration of voters;
- Supervise the preparing, publication and maintenance of a national voters' register and local authority voters' register;
- Supervise and control the registration of political parties;
- Supervise, direct and control the conduct of elections; and

- Perform any other functions conferred upon it by or under the provisions of this Act or any other law.<sup>9</sup>

**The current members of the ECN are:**

1. Victor Tonchi (Chairperson);
2. Ms. Tjipueja;
3. Ms. Rosa Shipiki-Kapolo;
4. Mr. Shafimana Ueitele; and
5. Mr. Lazarus Shatipamba

The day-to-day running of the Commission is executed by the Directorate of Elections. The Directorate is responsible for the administrative and clerical work involved in the performance of the functions of the Commission.

The ECN as the electoral management body is expected to conduct its tasks in a transparent and accountable manner. Observers must familiarize themselves with the roles of the ECN in organizing the election process and the extent to which these contribute to an effective administration of the elections.



<sup>7</sup> This section is mainly based on material from *The Election Observation Handbook*, 5th Ed, ODIHR, Warsaw, Poland, 2007

<sup>8</sup> See Electoral Act of 1992 as amended.

<sup>9</sup> *Election Watch*, Issue No. 3, Institute for Public Policy and Research, Windhoek, 2009



#### Possible problems to be aware of:

- Whether the ECN enjoys the broad confidence of election stakeholders;
- Whether the ECN is under any sort of political pressure or lack independence from the executive;
- Whether the ECN tends to make decisions by voting along political lines rather than by broad agreement;
- Whether the ECN fully publicize their decisions; and
- Whether there is effective co-ordination between ECN and regional or local officials responsible for supporting elections.

### B. Material and human resources

**Observers should establish whether the election administration has adequate resource requirements to conduct an efficient election process. This includes funds for:**

- the reimbursement of a sufficient number of suitable polling-station facilities, polling-station equipment (ballot papers, secure and adequate ballot boxes, adequate polling booths), and
- communications and computer capacity.

**Adequate human resources and specialized knowledge are also required to implement an election effectively.**

#### Observers should ascertain whether:

- a sufficient number of election officials have been appointed;
- clear guidance and instructions have been issued to election officials, and
- whether election officials are familiar with the tasks to be carried out during the entire electoral process.

Observers should also assess whether election commission members, including members nominated by political parties, have received standardized training at all levels of the election administration. Observers should observe such training sessions for election officials whenever possible.

#### Possible problems to be aware of:

- Inadequate voting equipment;
- Polling stations in facilities that are too small or are not accessible to voters with disabilities;
- Inexperienced polling-station officials;
- Inadequate training for polling-station officials;
- Lack of clear written instructions on polling procedures; and
- Polling-station personnel being appointed too late to receive adequate training.

### C. Relationship with the ECN

Maintaining a good relationship with the ECN is very important. Observers must support the work of the ECN but retain their independence. The roles of the two bodies are different and should not be blurred. Observers need to protect their independence and their right to comment. However, the observers need not be unnecessarily negative, antagonistic or question every little move of the ECN. An attitude of “us-versus-them” should be avoided at all cost.

## 2. Observing the registration of candidates and political parties

The ECN, as the electoral management body, is responsible for registering candidates for an election. The same general principles underlying the right to vote apply to the right to be a candidate.



All political parties should be able to nominate and field candidates freely and on equal terms. Any arbitrary or discriminatory practices for the purpose of disqualifying or undermining certain candidates or political forces is prohibited. There should be no restrictions on candidates for reasons such as race, sex, religion, political affiliation, ethnic origin, or economic status. To avoid confusion, only the nomination requirements for the Presidential and National Assembly elections will be explained.

## A. Presidential elections

The President is elected by absolute majority through universal adult franchise. Election of the President and members of the National Assembly is conducted concurrently every 5 years. In order to run as a presidential candidate, the persons must meet the following requirements. S/he must:

- be a Namibian citizen by birth or decent;
- be 35 years or older;
- qualify to be elected as a members of the National Assembly (see requirements on next page);
- be a registered voter;
- be nominated by a political party as a representative of the party; or
- in case of an independent candidate, be nominated and be supported by at least 300 registered voters from each of at least 10 regions of Namibia; and
- pay the prescribed deposit into the State Revenue Fund.<sup>10</sup>

During the last Presidential elections seven candidates ran for the office of President. The table below shows the results for the 2004 Presidential elections.<sup>11</sup>

Candidate	Party	No. votes	% votes
Hifikepunye Pohamba	SWAPO Party of Namibia	625 605	76.44
Benjamin Ulenga	Congress of Democrats (CoD)	59 547	7.28
Katuutire Kaura	Democratic Turnhalle Alliance (DTA)	41 905	5.12
Kuaima Riruako	National Unity Democratic Organisation (NUDO)	34 651	4.23
Justus Garoeb	United Democratic Front (UDF)	31 354	3.83
Henry (Henk) Ferdinand Mudge	Republican Party (RP)	15 955	1.95
Jacobs (Kosie) Willem Francois Pretorius	Monitor Action Group (MAG)	9 378	1.15
<b>Total</b>		<b>818 395</b>	<b>100.00</b>

<sup>10</sup> Section 54, *ibid.* For further details on the nomination process and procedures, see Ss. 55, 56, 57 and 58 of the same Act.

<sup>11</sup> EISA, retrievable at <http://www.eisa.org.za/WEP/nam1999results.htm>

## B. National Assembly elections

**The election of members of the National Assembly is conducted through direct universal adult franchise based on a party list and in accordance with the principles of proportional representation. The Electoral Act provides that for a person to be nominated as a candidate for the National Assembly, s/he must meet the following requirements:**

- be 21 years or older;
- must not have a criminal record (obtained inside or outside Namibia after independence) for which s/he was sentenced to imprisonment of more than 12 months without the option of a fine, unless s/he received a free pardon or his/her imprisonment has expired at least 10 years before the date of his/her election; the same restriction apply to persons who, before independence, were sentenced to death inside or outside Namibia for offences that would also have constituted a crime in Namibia;
- not be an unrehabilitated insolvent;
- not have been declared mentally ill by a competent courts of law;
- not be civil servants; and
- s/he must not be members of National Council, Regional Councils or Local Authorities.
- s/he must be a registered voter; and
- be a member of the political party submitting the list of candidates in question.<sup>12</sup>

The registration of candidates and political parties are important and must be closely observed.

### **Possible problems to be aware of:**

- Banning, suspension, or deregistration of parties or candidates;
- Restrictive or discriminatory policies with regard to the formation or operation of political parties or civil society groups;
- Selective implementation of the law with respect to the registration of parties or candidates;

- Requirements for excessive deposits, mandatory regional representation, or excessive numbers of signatures to qualify for registration;
- Excessive language requirements;
- Disqualification of candidates for previous violations of the administrative code or administrative regulations;
- Disqualification of candidates or parties due to technical problems with their applications; and
- Undue delays or administrative obstacles to the registration of political parties.



<sup>12</sup> Ibid. Section 59 (3), The list of candidates are submitted to the ECN by political parties wishing to take part in the National Assembly elections (see sec. 59 (1) & (2).

The table below shows the 2004 results for the Presidential elections. <sup>13</sup>

Parties	No. of votes	% votes	Total seats
SWAPO Party of Namibia	620 609	76.11	55
Congress of Democrats (CoD)	59 464	7.29	5
Democratic Turnhalle Alliance (DTA)	42 070	5.11	4
National Unity Democratic Organisation (NUDO)	34 814	4.15	3
United Democratic Front (UDF)	29 336	3.60	3
Republican Party (RP)	16 187	1.96	1
Monitor Action Group (MAG)	6 950	0.85	1
Namibia Movement for Democratic Change (NMDC)	4 380	0.51	0
South West African National Union (SWANU)	3 610	0.42	0
<b>Total</b>	<b>817 420</b>	<b>100.00</b>	<b>72</b>

## Observing voter registration

Voter registration establishes the eligibility of individuals to cast a ballot. Voter registration is the process of verifying potential voters, and entering their names and other information on a voters list.

In Namibia, voter registration takes place under the Electoral Act. There are three systems of voter registration in Namibia. *These are the general voter registration, supplementary registration and continuous registration.*

*General voter registration* provides for the total registration of all potential voters. This applies to all persons, including those who registered and voted in the past. It takes place every 10 years.

**Supplementary registration takes place between the 10 year period, especially when an unexpected vacancy occurs :**

a) In a constituency when a regional councillor dies or vacates a seat;

b) In the Presidency when the incumbent president dies or vacates a seat; and  
c) When a Local Authority Council has been dissolved.

**The purpose of supplementary registration is to include persons in the voters' register who qualify for registration. These may include:**

1. Those who moved from one constituency to another;
2. Those whose voter registration cards have been lost or destroyed and;
3. Those who turned 18 years of age.

*Continuous registration* takes place throughout the year. It allows persons who were not registered during supplementary registration or general registration, or those who moved from one constituency to another or whose cards have been lost or destroyed to register. Continuous registration is suspended after the proclamation of elections. Since 1997, continuous registration facilities have been available at every

<sup>13</sup> Ibid, note 11



Post Office. In addition, each constituency contains at least one permanent registration point.

**To be able to register a voter a person must:**

- be a Namibian citizen;
- be 18 years or older;
- not have been declared mentally incapable by a court of law; and
- be able to identify him/herself.



14 *Supra* note 9  
15 *Ibid*

**For the upcoming 2009 Presidential and National Assembly Elections, the following people should register to vote:**

- those who have turned 18 since the last registration of voters;
- those who have moved to new constituencies since the last registration of voters;
- those who have lost their voter registration cards; and
- those who have adopted new names, for example through marriage.<sup>14</sup>

**Registration of persons temporarily outside Namibia**

Namibian citizens outside the country will now be able to register as voters for all future Presidential and National Assembly elections. The amendments made to the Electoral Act empower the ECN to establish temporary registration points outside the country at any Namibian diplomatic mission for this purpose.

The ECN keeps the national voters register at the office of the Commission for inspection by the public. Any person who wants to inspect or make copies or take extracts from the register is entitled to do so during normal office hours.<sup>15</sup> Observers should carefully assess the effectiveness and inclusiveness of the voter-registration process. In particular, they should ensure that no unreasonable restrictions are placed on voter registration. Unreasonable restrictions include those based on race, sex, religion, ethnic origin, past political affiliations, language, literacy, property, or ability to pay a registration fee. However, a person may rightfully be restricted to register as a voter in circumstances where it is considered reasonable, fair and justifiable to do so. Such reasonable restrictions may relate to factors such as residence, citizenship, imprisonment, etc.

**Possible problems to be aware of:**

- Lack of a central voter register;
- Registers and/or lists not open to public inspection or not easily accessible;

- Lack of clear rules for registration or for contesting mistakes on registers and/or lists;
- Ineffectiveness of the appeals process;
- Discriminatory practices;
- Non-registration of internally displaced persons;<sup>16</sup>
- Registration processes that are not easily accessible for all citizens;
- Lack of voter education on registration;
- Widespread inaccuracies in the register and/or lists; and
- Registers and/or lists containing unnecessary data such as ethnicity.



## Case Study Two:

*The Electoral Commission declared that registration will take place on the 10th and 12th of July. Provision was also made for special registration to take place at old age homes, hospitals and at police and army barracks. Political parties were advised that special registration would take place on the 9th July. However, due to staffing difficulties the Commission conducted special registration at 3 old age homes and two hospitals on the 8th July.*

*The Electoral Commission tried to inform the parties and was only able to inform Parties X, Y and Z. Party X is the current ruling party. Parties A and B lodged an objection as their agents were not able to attend. They contended that the Electoral Commission was biased in favour of the ruling party and that the registration for special voters should not have taken place until all the Parties could be informed. They also contended that these old age homes and hospitals are in what is regarded as predominantly the areas where voters are known to support the ruling party.*

Source: Democracy, Elections and Conflict Management, ECN, Participant's Manual

## Questions

1. Would you regard the decision of the Electoral Commission as reasonable and fair? Explain your answer.
2. Can the action of the Commission be regarded as electoral fraud? Explain your answer.
3. What pre-emptive action should be taken to avoid similar situations in future?

<sup>16</sup> The floods that were experienced in the North and North Eastern parts of the country earlier this year displaced many people. Observers should pay special attention to this matter.

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## 4. Observing the registration of women

The registration of women deserves special mention. Article 10 of the Namibia Constitution provides for equality and freedom from discrimination. In part, it reads as follows:

"... (2) No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status."

The right to participate in political activities as provided for in the Namibian Constitution applies to all citizens, including women.

**Another relevant legal instrument worth noting in this regard is the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa. This Protocol was ratified by Namibia. Article 9 of the**

**African Protocol on the Rights of Women reads:**

*1. "States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:*

- a) women participate without any discrimination in all elections;*
- b) women are represented equally at all levels with men in all electoral processes;*
- c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.*

*2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making."*

Since gender issues tie in with all aspects of an election, they



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should be an integral part of the observation process. Observers should therefore evaluate how various aspects of the election affect women and men in different ways.

**Some of the aspects of an election that observers should assess for their impact on women's participation include a finding as to whether:**

- **The legal framework** includes clear provisions on the equal civil and political rights of women; and whether any aspects of the election law, political party law or other election-related legislation and regulations indirectly disadvantage women;
- **The electoral system**, is mindful that proportional systems are more likely to result in the election of women than the majority system; also, that closed candidate lists tend to result in the election of more women;
- Assessing the effectiveness and enforcement of any **formal or informal quotas** or other temporary special measures aimed at speeding-up true equality between men and women, or whether it might be appropriate to institute such measures if they do not exist;
- Assessing **the election administration**, taking into account whether women serve on election management

bodies in equal numbers as men; whether decisions on election operations—including voter registration, ballot design, voter education and polling procedures—have been taken with the needs of women in mind; and whether the election management body has adopted a clear policy on gender; and also taking into account polling procedures and voter turnout on election day;

- Assessing to what extent **political parties** have included women in their operations, decision-making bodies, and candidate lists;
- Assessing whether the **media** conveys a positive image of women as voters, candidates and political leaders.

All members of the election observation mission should be sensitive to these issues, and should pursue information on women's participation as part of their normal duties. Every meeting with a government official, election administrator, political party representative or other person connected with the election process provides an opportunity to collect information on women's participation. Collecting statistical data can be particularly helpful in analyzing women's participation and assessing whether trends are moving in a positive direction.



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## 5. Observing the election campaign

The period between the conclusion of candidate nomination and Election Day is used by political parties to increase their political campaigns. During the campaign period, competing parties and candidates tend to ignore the code of conduct and resort to unlawful practices such as declaring certain areas as 'no-go' areas thereby preventing rivals from entering those zones. This is not acceptable. Political parties in Namibia signed a code of conduct to which they are supposed to adhere to during elections. In their code of conduct the parties declare that everyone has the right to express his or her political convictions and ideas, without threat or fear of intimidation and further state that intimidation, in any form, is impermissible.

### National and international commitments and principles require that political campaigning:

- Be conducted in a free and fair atmosphere in which neither administrative action, violence, nor intimidation bars parties and candidates from freely presenting their views and qualifications.
- That fundamental freedom such as the rights to freedom of expression, assembly, and association are respected at all times.
- That no arbitrary or unreasonable restrictions are placed

on campaign activities, meetings, or rallies.

- During the campaign process, parties and candidates should adhere to the electoral code of conduct that guides their behaviour.<sup>17</sup>

Observers should have a good understanding of the political context and issues surrounding a particular election. Observers should therefore meet with candidates and parties, observe rallies, and review campaign material in order to gain an understanding of the political processes and issues dominating the campaign. Observers should also assess the extent to which the population— including minority groups and women — are active in the political process and seek to understand any reasons for a lack of their active involvement.

### Possible problems to be aware of:

- Forms of campaign violence;
- Disruption of, or placing restrictions on, campaign meetings or rallies, including refusals to grant permits;
- Reports of intimidation or harassment;
- Exclusion of women or minority groups from the political process; and
- Systematic efforts to remove or deface campaign posters.<sup>18</sup>



<sup>17</sup> PEMMO Principle No. 4.5

<sup>18</sup> Ibid, note 4

## 6. Observing the security agencies

There are many examples that show elections are often characterized by violence and intimidation tactics by supporters of the various political parties and candidates. This of course touches on the credibility and fairness of the electoral process. The law enforcement agents i.e police, security and the national defence force play an important role. The law enforcement agencies should be impartial and not be seen to be favouring any political party or candidate.

### Observers must make sure they are informed of the planned response preparations for such incidents.

- Election agents must ensure that the organizations they represent prevent violence among their supporters.
- Observers must watch out for the manner in which law enforcement agents react to incidents. Do they act impartially and in a non-partisan fashion when resolving conflicts?
- The issue of election related arrests and detention must also be discussed and followed up as these are often indications of much more serious political developments in the country. These have to be followed up more seriously

and be recorded where possible.

- These agents have a duty to prevent violence among opposing voters, intimidation by candidates and supporters.
- The issue of election related arrests and detention must also be discussed and followed up as these are often indications of much more serious political developments in the country. These have to be followed up more seriously and be recorded where possible.

### Divide yourselves in smaller groups and discuss the following:

1. Does the ECN have adequate resources and capacity to carry out elections?
2. Would you say the ECN is an independent entity with autonomous power and funding to administer elections?
3. Is the Namibian media free and unfettered? What role do they play during elections?
4. Are there any issues to take into account concerning the role of the security forces in Namibia when it comes to elections?

